seeds warranted to be alfalfa. The resulting crop contained some alfalfa, but consisted mostly of weeds, and was not marketable. *Held*, that the plaintiff may recover the value of the crop which would have resulted if all the seeds had been alfalfa. *Depew* v. *Peck Hardware Co.*, 121 N. Y. App. Div. 28.

The allowance of such prospective profits is usually based on the ground that the parties at the time of the warranty foresaw the use to which the seeds would be put, and that the value of the contemplated crop can be computed with reasonable certainty. *Passinger* v. *Thoburn*, 34 N. Y. 634. In the case of bulbs this certainty, at least as to quantity, is obvious, and the rule of the present case applies. *Edgar* v. *Breck*, 172 Mass. 581. But if no crop results from the wrong seeds, the evidence of the probable produce of the right seeds in the land and the year in question is insufficient, and hence the only damages recoverable are the expenses of planting and the rental value of the land. *Shaw* v. *Smith*, 45 Kan. 334; *contra*, *Phelps* v. *Eyria Milling Co.*, 12 Oh. Dec. 692. If there results a crop of the kind contemplated, but of inferior quality, prospective profits are allowed. *White* v. *Miller*, 71 N. Y. 118. If, however, the resulting crop is of an entirely different kind, it would seem that the computation of the expected crop is too uncertain. *Cf. Bell* v. *Mills*, 68 N. Y. App. Div. 531. The principal case seems to fall on this side of the line, though the fact that some of the expected kind of grass came up may be urged to support the decision.

ELECTIONS — CONSTITUTIONALITY OF VOTING MACHINES. — A state statute authorized the use of a voting machine whereby the voter made no separate ballot to be counted later, but had to trust to the mechanical accuracy of mechanism which he could not see. *Held*, that the machine does not fulfil the requirement of the state constitution that elections shall be by written vote. *Nichols* v. *Minton*, 82 N. E. 50 (Mass.).

For a discussion of a contrary holding under a slightly different constitutional provision, see 20 HARV. L. REV. 329.

ELECTIONS — INDORSEMENT OF BALLOTS WITH RUBBER STAMP. — A statute required that ballots should be indorsed with the initials of a judge of election. The ballots in question bore initials imprinted by a rubber stamp. *Held*, that the ballots are void. *Berryman* v. *Megginson*, 82 N. E. 256 (Ill.).

As the statute declared that ballots should not be counted unless indorsed by the initials of a judge, it was mandatory, not directory, and strict compliance was necessary. *Slaymaker* v. *Phillips*, 5 Wyo. 453. A stamp has been held sufficient where a signature is required. *Streff* v. *Colteaux*, 64 Ill. App. 179; *Bennett* v. *Brumfit*, L. R. 3 C. P. 28. But to effect the purpose of this statute, the greatest possible prevention of fraud, handwriting should be required. *Choisser* v. *York*, 211 Ill. 56. It shows that the ballot was cast in accordance with the law if the judge was honest; it is strong evidence against him if he was dishonest, whereas a stamp is not so strong evidence, since the die can be borrowed, stolen, or duplicated. It is often argued that such a statute as this is unconstitutional because a voter may be disenfranchised through the fault of judges of election. *Moyer* v. *Van de Vanter*, 12 Wash. 377. But the weight of authority is that, since a voter is presumed to know the law, if he uses a ballot without the initials of the election judge, his disenfranchisement is justifiable. *Miller* v. *Schallern*, 8 N. D. 395.

EMBEZZLEMENT — APPROPRIATION BY AGENT OF FUNDS COLLECTED ON COMMISSION. — An insurance company employed the defendant, who was not a general commission agent, to collect premiums, allowing him to deduct a commission from the funds received. He converted the whole to his own use. *Held*, that he is guilty of embezzlement. *Commonwealth* v. *Jacobs*, 104 S. W. 345 (Ky.).

If the agent is not to have his commission until he hands over to his principal the sum received, he is guilty of embezzlement if he feloniously converts it. *Commonwealth* v. *Smith*, 129 Mass. 104. But where he is entitled to deduct his commission before such delivery, he has an interest in the fund, and

it has been held, on the analogy of a similar appropriation by a partner, that he cannot be convicted. *McElroy* v. *People*, 202 Ill. 473. Other courts reach the opposite result by making the distinction that the partner receives for the firm of which he is a member, and hence for himself, whereas the agent receives for his principal. *People* v. *Civille*, 44 Hun (N. Y.) 497. But the agent is really a joint tenant of the sum. *State* v. *Kent*, 22 Minn. 41. And in general a joint tenant cannot steal or embezzle the *res*. See *State* v. *Kusnick*, 45 Oh. St. 535, 540. However, where it is composed of ordinarily separable articles, like a quantity of one-dollar bills, each person's share may be said to consist of a proportionate number of the articles rather than a proportionate interest in each article, and the difficulty of designating the exact objects in which the misappropriating party has no interest should not prevent conviction. 2 BISHOP, CRIM. L., §§ 370, 371.

EMINENT DOMAIN — COMPENSATION — EXPENSES FOR STATUTORY ALTERATIONS WHEN HIGHWAY OPENED ACROSS RAILWAY. — In an action to condemn a strip of land for a highway across the defendant's right of way, the defendant asked for compensation for the expense of making the alterations required by statute. *Held*, that the defendant is not entitled to such compensation. *City of Grafton* v. *St. Paul, M. & M. Ry. Co.*, 113 N. W. 598 (N. D.).

Several jurisdictions hold that a railroad should be compensated for the alterations made necessary by the opening of a highway crossing, though such alterations are required by police regulations. *Kansas Cent. R. R. Co.* v. *Board of County Commissioners*, 45 Kan. 716. There is an equal amount of authority, however, holding, in accord with the present case, that the railroad should not be compensated for alterations required by police regulations. *Chicago, Mil. & St. P. Ry. Co.* v. *City of Milwaukee*, 97 Wis. 418. These decisions seem unsound on principle, for the expense of the alterations is caused by the condemnation. When taking land by eminent domain imposes on the adjoining owners a statutory duty of erecting new fences, compensation for the fencing must be made. *Raleigh, etc., R. R. Co.* v. *Wicker*, 74 N. C. 220. But by holding arbitrarily that the railroad impliedly undertakes to make the changes necessitated by new highway crossings, the Supreme Court has denied the railroad compensation. *C., B. & Q. R. R.* v. *Chicago*, 166 U. S. 226. A statute in New York imposing this burden on railroads, and held constitutional as an exercise of the power of amending charters reserved to the legislature, effects the same result. *The Albany Northern R. R. Co.* v. *Brownell*, 24 N. Y. 345. Without such a provision it is submitted that the principal case should not be followed.

EQUITABLE CONVERSION — CONVERSION BY WILL PROVIDING FOR SALE AFTER TERMINATION OF PARTICULAR ESTATE. — A testator devised land to his wife for her life or widowhood, and directed that at her death or marriage it should be sold and the proceeds divided among their children. *Held*, that before the death or marriage of the widow, a son has an interest in the property attachable as realty. *Williams* v. *Lobban*, 104 S. W. 58 (Mo., Sup Ct.).

When a testator by his will directs the sale of land at his death, and a distribution of the proceeds, the beneficiaries get no interest which can be attached as an interest in realty. *Brolasky* v. *Gally's Executors*, 51 Pa. St. 509. By the weight of authority, when the sale is not to be effected until a future time which is certain to arrive, such as a fixed date, or the termination of a life estate, the conversion takes place at the testator's death. *Handley* v. *Palmer*, 103 Fed. 39; *Lash* v. *Lash*, 209 Ill. 595. There are, however, a considerable number of cases which hold, in accord with the present decision, that the conversion occurs at the time appointed for the sale. *Savage* v. *Burnham*, 17 N. Y. 561. The majority view, however, seems correct. The conversion is due to the creation of a right to specific performance in equity; it should therefore take place when that right is created, and though it cannot be enforced until a later time, the right is created at the testator's death. See 18 HARV. L. REV. 266.